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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 1334

RONALD KENT HOOPER and
PURVIS OLE SCROGGS,

Petitioners,

vs.

THE HONORABLE WILLIAM H. GOODING,
Judge of the Superior Court of The
State of Arizona; and ROBERT K. CORBIN,
County Attorney of Maricopa County, Arizona,

Respondents.

CLOSING MEMORANDUM OF PETITIONERS ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LEWIS ROCA BEAUCHAMP &
LINTON

By John P. Frank
John J. Flynn
Robert A. Jensen
Paul G. Ulrich
114 West Adams Street
Phoenix, Arizona

Attorneys for Petitioner Hooper

HENRY J. FLORENCE
1835 E. Myrtle Avenue
Phoenix, Arizona

Attorney for Petitioner Scroggs

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Petitioners sought a closed preliminary hearing on the grounds that the publicity resulting from an open hearing would cause substantial likelihood of unfair trial and destruction of professional reputations. The prosecuting attorney affirmatively con-

ceded this, objecting only on the ground of a total lack of any discretion in the trial court to close any hearing (Pet. Br. 23); the state trial judge denied the motion exclusively on this ground (Pet. Br. 30-31). The heart of respondents' opposition is the assertion that "there was no evidence to support these findings by the District Judge and the evidence before the state magistrate was not part of the record before the District Judge." (Brief in Opposition, p. 2). Respondents overlook the pleadings; the essential facts as to the events before the magistrate were alleged in the complaint (par. 6, R. 2) and admitted by Judge Gooding's counsel (Transcript of Hearing, March 8, 1968, at 2-3). Judge Gooding's findings are in the District Court record. (Pet. Br. 30-31).

We say that this denial conflicts with *Sheppard v. Maxwell,* 384 U.S. 333, 86 S. Ct. 1507, 16 L. Ed. 2d 600 (1966), and *Estes v. Texas,* 381 U.S. 532, 85 S. Ct. 1628, 14 L. Ed. 2d 543 (1965); respondents do not mention those cases. We say that the decision of the Court of Appeals conflicts directly with the standards of the Reardon Report, and that its application is presently actively important in all 50 states. The respondents do not mention the Reardon Report or the opinion of the Court of Appeals.

The sole contention respondents bring here is that the District Court lacked jurisdiction, a matter not decided by the Court of Appeals. For reasons suggested in our petition, this question, too, is important. We have brought the identical substantive problem here from the State Supreme Court in No. 1335 and respondent there contends exclusively that there is no jurisdiction in this Court to review the State Supreme Court order. We have as yet received no response to our petition for mandamus directed to the state trial judge, No. 1726 Misc.; presumably there will also be a jurisdictional objection to it.

But the name of the game is justice, and it does not permit of such foxy play. The practical consequence of the proceedings below is a holding that magistrates conducting preliminary hearings may be deprived of all discretion to close them regardless of the adverse effect on fair trial. This is (a) in conflict with prior decisions of this Court; (b) genuinely important; and (c) ought to be reviewed here.

Respectfully submitted,

LEWIS ROCA BEAUCHAMP & LINTON

By John P. Frank
John J. Flynn
Robert A. Jensen
Paul G. Ulrich
114 West Adams Street
Phoenix, Arizona

Attorneys for Petitioner Hooper

HENRY J. FLORENCE
1835 E. Myrtle Avenue
Phoenix, Arizona

Attorney for Petitioner Scroggs

May, 1968